

## **EXIBIT #28**

**AFFIDAVIT  
J. HARDING**

STATE OF NEW YORK                                 )  
  ) ss.  
COUNTY OF WESTCHESTER                         )

J. HARDING, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I have worked at the New York City Department of Education (DOE) for over 16 years, as an administrator, since my start date in September 2005.
3. I hold a Bachelor of Science Degree in Psychology from Fordham University, a Masters of Science in Education from Mercy College and an Advanced Certificate from Hunter College for School Building Leadership and School District Leadership.
4. In the 16 years I have worked for the DOE, I had never been required to take a vaccine to be able to perform my job effectively.
5. Until October 4, 2021 when I was placed on indeterminate Leave without Pay for refusing to submit to the Covid-19 vaccine, I served as a tenured Education Administrator-Central Based Support Team Case Manager for CBST located at 333 7<sup>th</sup> Avenue, New York, NY 10001.
6. As a CBST Case Manager, I am responsible for placing students with special needs in Approved New York State Education Department (NYSED) Non-Public Schools. My job duties are carried out through communicating with NYC DOE colleagues, advocates, school personnel in the Approved NYSED Non-Public Schools and families by phone and email to coordinate placement for students at these schools.
7. From March 2020 through July 2021, my responsibilities as a CBST Case Manager were carried out 100% remotely from home. The NYC DOE issued a company computer to CBST Case Managers. The only accommodation I would need to work remotely is to have a company cell phone.

8. Notwithstanding my remote work ability, I was placed on leave without pay by the DOE starting October 4, 2021. See **Exhibit A**
9. It was declared for public safety reasons during the Covid-19 Pandemic, on March 15, 2020 that the Mayor Bill DeBlasio determined that all schools would go to remote instruction.
10. However, starting on July 1, 2021, DOE employees began receiving information about returning to the office, face coverings and COVID-19 vaccines. At this time, it was communicated that employees would not be asked to disclose their vaccination status. See **Exhibit B**
11. On 7-26-2021, an email was sent out by Chancellor Meisha Porter discussing that effective September 13, 2021, all DOE employees must have proof they are vaccinated for COVID-19 or, if not vaccinated, be tested for COVID-19 on a weekly basis. See **Exhibit C**
12. On 8-2-2021, an email from the NYC Division of Human Capital regarding the Face Covering Policy for City Employees was sent out. If you were unvaccinated, you were directed to wear a mask at all times while in the workplace. Follow-up emails were sent on 8-12-2021, 8-20-2021, 8-23-2021, 9-1-2021, 9-3-2021, and 9-12-2021 from Division of Human Capital and Chancellor Meisha Porter with guidance to returning to the office on vaccines, vaccination portal, face coverings and testing. See all emails as **Exhibits D**
13. Other than receiving instruction regarding required Covid-19 testing, masking hand, surface sanitation and hand washing for public safety and health to stop the spread of Covid-19, no other instructions or training was provided by the DOE regarding other safety precautions was provided to employees to reduce the risk of contracting or spreading the virus that causes Covid-19.
14. On 9-18-2021, an email was sent from the Division of Human Capital informing employees of the process of applying for Covid 19 Vaccine Mandate Related Exemption

or Accommodation through the online portal called SOLAS (Self-Service Online Leave Application System). See **Exhibit E**

15. On 9-21-2021, I uploaded a Religious Exemption Request into SOLAS. An emailed response was received from SOLAS confirming receipt of my Religious Exemption request. See **Exhibit F**)

16. On 9-22-2021, I received an email from SOLAS stating that my application failed to meet the criteria for a religious based accommodation. It informed me of how to APPEAL and that it had to be done in one (1) school day of the notice in SOLAS. See **Exhibit G**

17. At no time did the DOE ever provide any information regarding how to make a request for the vaccine exemption or any other safety precautions that could be used in lieu of taking the vaccine. Neither did the DOE inform me of my right to obtain accommodations including work place safety equipment beyond the basic face mask but of a high grade of equipment that would make the office safe for me and other staff. No one from DOE ever reached out to me to discuss how my job can be worked 100% remote and that I had already been working remote.

18. On 9-23-2021, I received an email confirming my request to appeal was received. I was given only approximately 1 day to submit an appeal. See **Exhibit H**

19. On 9-23-2021, an email was sent from the Division of Human Capital outlining the consequences for mandate non-compliance. See **Exhibit I**

20. But almost daily or at least several times a week, I was getting notices from the DOE and/or from the Chancellor urging me to take the vaccine or I would be placed on Leave without Pay.

21. On 9-27-2021, an email was sent from Chancellor Meisha Porter stating that the temporary injunction was dissolved and implementation of the mandate would begin in

the NYC DOE on 10-4-2021. Proof of vaccination needed to be uploaded in the Vaccination Portal by Friday, October 1, 2021 at 11:59 PM. If proof of vaccination is not uploaded by Friday, October 1, 2021 at 11:59 PM, employees would be removed from payroll on Monday, October 4, 2021. On Friday, October 1, 2021, I informed my supervisor, Dinh Lu-Berio, via telephone call that I would fall into this category. On September 30, 2021, an email was sent out reminding employees to upload proof of vaccination into the Vaccination Portal by 11:59 PM on October 1, 2021 or beginning Monday, October 4, 2021, employees would be placed on Leave Without Pay status. See **Exhibits J and K**

22. Then on 10-3-2021, I received an email with an Arbitration Award between the DOE and the United Teachers Federal (UFT) that explained that there was some type of agreement between the DOE and UFT that would only allow Covid vaccine exemptions for certain religious groups, namely the Church of science and that no other religious groups of beliefs would received an accommodation. See **Exhibit L**
23. Prior to 10-3-2021, I was never given any information about the UFT meeting with the New York City DOE to negotiate on behalf of members regarding the requirements for the Covid-19 vaccine. My union, CSA, which agreed with and signed onto the same Arbitration Agreement without informing me and the rest of their members or giving us a chance to vote on the arrangement.
24. I had learned that the UFT had entered into an arbitration agreement that only provided exemptions from the Covid-19 vaccine requirement to only people of a certain religion and that others could apply.
25. On October 15, 2021, I received a paycheck. I emailed the payroll secretary to inquire about how to pay back the money received as I was placed on Leave Without Pay status. Lizette Diaz was unable to tell me how to return the money. I followed up on 11-15-2021 and did not receive a response. See **Exhibit M**.

26. I was very upset, distraught and angry that my 16 year career was in jeopardy due to a vaccine that had never been required before of teachers.
27. On October 28, 2021 and November 2, 2021, emails were sent reminding employees on LWOP that deadlines to choose a severance option (10-28-2021) or extend your LWOP status (11-30-2021) were approaching. See **Exhibits N and O**
28. On November 19, 2021, an email was sent by the Division of Human Capital regarding the New Appeal Option for Religious Exemption to the COVID-19 Mandate. To submit the appeal, it had to be done through the SOLAS system no later than 11:59 PM on Friday, December 3, 2021. The email stated we did not have to upload the original documentation submitted, but could upload any new documentation. I uploaded a letter to the Citywide Panel regarding a remote work accommodation on December 2, 2021. On December 2, 2021, an email was sent by SOLAS confirming receipt of the new appeal. See **Exhibits P, Q and R**.
29. The entire process of seeking an exemption from the vaccine was exhausting, stressful and confusing.
30. Nevertheless, on January 7, 2022, an email was sent from the Division of Human Resources stating my appeal was sent to the Citywide Appeal Panel and asked for additional information regarding my religious exemption to the COVID-19 vaccine mandate which needed to be submitted by Friday, January 14, 2022 at 8:00 PM. See **Exhibit S**.
31. Then on March 28, 2022, I received an email notice that my City-wide panel denied my appeal for an accommodation. I was distraught and have experienced sleepless nights for weeks.
32. Subsequently, I filed a claim of religious harassment and an ADA claim with the EEOC.

33. This entire DOE process for obtaining an exemption and accommodations to continue to work has caused me tremendous anxiety, stress and frustration. As an Administrator for the DOE, I am extremely disappointed in how the mandate was handled by leadership and because I know that DOE employees did not need to be put on LWOP, including myself, suffered great anxiety and depression that my colleague would treat me and others in such an unjust manner.

34. More could have been done to preserve my job and the jobs of others during the Pandemic and the DOE has wrongly chose to refuse its employees our rights to continue to work with some type of health and safety protections that allows us to continue to do our jobs.

35. I have been emotionally spent and anguished to the point I have experience headaches, stomach pains, and nerve pain.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 17<sup>th</sup> day of April, 2022.

J. Harding  
J. HARDING

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 17<sup>th</sup> day of April, 2022, by J. HARDING, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Janet L. Finnegan  
Signature of Notary Public

[Affix Notary Seal]

